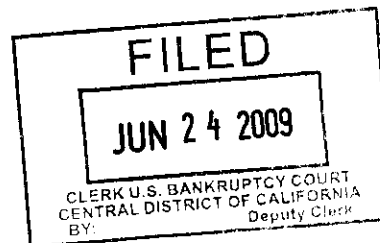


ORIGINAL 28

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No.

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FOR COURT USE ONLY



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:  
**KAVEH LAHIJANI,**

Debtor(s).

CASE NO.: **1:98-bk-15561 GM**  
Chapter 7

**NOTICE OF SALE OF ESTATE PROPERTY**

Sale Date: **July 15, 2009**

Time: **10:00 A.M.**

Location: **Courtroom 303, U.S. Bankruptcy Court, 21041 Burbank Blvd, Woodland Hills, CA 91367**

Type of Sale: ☐ Public

☒ Private

Last date to file objections:

**See attached Notice**

Description of Property to be Sold: **Real property located at: 1000 Flamingo Road, Laguna Beach, CA 92651**

Terms and Conditions of Sale: **See the attached Notice of Motion for Order (1) Approving the Sale of Real Property Asset of the Estate Free and Clear of Liens, (2) Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (3) Approving Asset Purchase Agreement in Connection With the Sale, (4) Approving Payment of Real Estate Commission and Other Costs of Sale; and (5) Granting Other Related Relief ("Notice")**

Proposed Sale Price: **\$3,460,000, subject to overbids - see the attached Notice for the terms of the sale**

Overbid Procedure (If Any): **See the attached Notice**

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

**July 15, 2009 at 10:00 A.M. in Courtroom 303 of the above-entitled Court located at 21041 Burbank Boulevard, Woodland Hills, CA 91367.**

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

**Leonard M. Shulman, Esq.**  
**Shulman Hodges & Bastian LLP**  
**26632 Towne Centre Drive, Suite 300, Foothill Ranch, CA 92610**  
**Telephone: (949) 340-3400; Facsimile: (949) 340-3000**

Date: **June 23, 2009**

COPY

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Attorneys for John M. Wolfe,  
The Chapter 7 Bankruptcy Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO DIVISION**

In re

**KAVEH LAHIJANI,**

Debtor.

Case No. 1:98-bk-15561 GM

Chapter 7

**NOTICE OF CHAPTER 7 TRUSTEE'S MOTION  
FOR ORDER:**

- (1) **APPROVING THE SALE OF REAL  
PROPERTY ASSET OF THE ESTATE  
FREE AND CLEAR OF LIENS;**
- (2) **COMBINED WITH NOTICE OF BIDDING  
PROCEDURES AND REQUEST FOR  
APPROVAL OF THE BIDDING  
PROCEDURES UTILIZED**
- (3) **APPROVING ASSET PURCHASE  
AGREEMENT IN CONNECTION WITH  
THE SALE;**
- (4) **APPROVING PAYMENT OF REAL  
ESTATE COMMISSION AND OTHER  
COSTS OF SALE; AND**
- (5) **GRANTING OTHER RELATED RELIEF**

**[Property Located at: 1000 Flamingo Road, Laguna  
Beach, CA 92651; Parcel No. 644-162-70]**

Date: July 15, 2009

Time: 10:00 A.M.

Place: Courtroom 303

United States Bankruptcy Court  
21041 Burbank Boulevard  
Woodland Hills, CA 91367

1 **TO THE HONORABLE GERALDINE MUND, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND THE DEBTOR**  
3 **AND CREDITORS AND PARTIES-IN-INTEREST:**

4 **PLEASE TAKE NOTICE** that on **July 15, 2009 at 10:00 A.M.**, in Courtroom 303 of  
5 the above-entitled Court located at 21041 Burbank Boulevard, Woodland Hills, CA 91367,  
6 John M. Wolfe, Chapter 7 Trustee for the bankruptcy estate ("Estate") of Kaveh Lahijani, the  
7 debtor herein ("Debtor") will brings a Motion for Order (1) Approving the Sale of Real Property  
8 Asset of the Estate Free and Clear of Liens, (2) Combined With Notice of Bidding Procedures  
9 and Request for Approval of the Bidding Procedures Utilized, (3) Approving Asset Purchase  
10 Agreement in Connection With the Sale, (4) Approving Payment of Real Estate Commission and  
11 Other Costs of Sale; and (5) Granting Other Related Relief ("Sale Motion"). Following is a  
12 summary of the Sale Motion.

13 **I. PREFATORY REMARKS AND SUMMARY OF SALE**

14 Through the Sale Motion, the Trustee seeks Court approval to sell the Flamingo Property<sup>1</sup>  
15 to the Buyer for a purchase price of \$3,460,000, all cash. This sale price is \$460,000, over the  
16 amount claimed by the first trust lienholder, Bankers West Mortgage, to be the value of the  
17 Flamingo Property.<sup>2</sup>

18 The Trustee estimates that after payment of costs of the sale, the estimated net sale  
19 proceeds will be approximately \$3,364,631. As set forth below, the disputed lien of Bankers  
20 West Mortgage in the alleged amount of \$3,360,000, and the Disputed Alleged Mechanic's Liens  
21 totaling approximately \$130,247.11, will attach to the net proceeds of the sale in the same  
22 validity and priority as prior to the sale pending agreement with the creditor or further Court  
23 order.

24 As set forth below, due to the very suspect and unusual circumstances associated with the  
25 Flamingo Property loan from Bankers West Mortgage (who appears to be a "friendly" secured  
26 creditor of the Debtor), the Trustee is very concerned and disputes the validity, priority and  
27 amount of the Bankers West Mortgage loan related to the Flamingo Property.

28 As set forth below, each of the Disputed Alleged Mechanic's Liens were recorded after  
the Flamingo Property became an asset of the Estate. Each of the Disputed Alleged Mechanic's  
Liens were recorded after the entry of the Substantive Consolidation Order (entered on October  
3, 2005) and after the Substantive Consolidation Order was recorded with the Orange County  
Recorder's Office (recorded on November 29, 2005). As such, the Trustee believes that the  
Disputed Alleged Mechanic's Liens were recorded in violation of the automatic stay under  
Bankruptcy Code Section 362. In addition, the Trustee believes that under applicable federal  
bankruptcy law, the Disputed Alleged Mechanic's Liens are each invalid and there are causes of  
action to have each of them set aside in that they were recorded in violation of the automatic stay  
after the Petition Date and after the Substantive Consolidation Order, and none of the Disputed  
Alleged Mechanic's Liens were authorized by the Bankruptcy Code nor order of the Bankruptcy  
Court. Furthermore, the Trustee disputes the validity of the Disputed Alleged Mechanic's Liens  
on the grounds that they may not have been properly perfected under the strict statutory  
requirements under California state law applicable to mechanic's liens.

<sup>1</sup> Title to the Flamingo Property is held in the name of "Elan Enterprises, Inc., a California corporation"  
("Elan Enterprises, Inc."). Pursuant a final order entered on October 3, 2005, this Court substantively consolidated  
the Debtor's assets with that of Elan Enterprises, Inc. and Vista Lane, LLC, a California limited liability company  
("Vista Lane LLC"). As such, the Flamingo Property is an asset of the Estate.

<sup>2</sup> In connection with its Motion for Relief From Stay on the Flamingo Property, Bankers West Mortgage  
submitted an appraisal valuing the Flamingo Property at \$3,000,000.

1 The Flamingo Property will be sold free and clear of all Liens and Encumbrances<sup>3</sup>, with  
2 Liens and Encumbrances not resolved through the sale, to attach to the proceeds of the sale in the  
3 same validity and priority as prior to sale. The Trustee does not believe it is prudent or necessary  
4 to resolve the Bankers West Mortgage disputed lien and/or the Disputed Alleged Mechanic's  
5 Liens by Court order or judgment prior to the sale. The disputed alleged lien of Bankers West  
6 Mortgage and the Disputed Alleged Mechanic's Liens are each subject to a bona fide dispute and  
the Bankruptcy Code provides for a means to sell free and clear of such interests. If the Estate is  
forced to wait for resolution of the disputes, the Trustee may lose the opportunity to capitalize on  
the current interest from the Buyer and may also lose the subject property through a foreclosure.  
As such, the sale should proceed now, with any disputed claims or interests of Bankers West  
Mortgage and/or the Disputed Alleged Mechanic's Liens to attach to the proceeds.

7 In addition, the Trustee seeks approval of the payment of real estate commission and  
8 other costs of sale associated with the sale of the Flamingo Property. The real estate commission  
9 and costs of sale to be paid related to the sale transaction will be paid through escrow from the  
10 proceeds of the sale. The Buyer's real estate agent will not be receiving a commission. If  
11 necessary, the Trustee's real estate agent has agreed to reduce his 3% commission to allow for  
12 payment of closing costs.

13 **The sale of the Flamingo Property at this time is essential because (1) the Trustee  
14 does not want to lose the favorable opportunity to sell the Flamingo Property as-is where-is  
15 for \$3,460,000, at least \$460,000 over the amount the Bankers West Mortgage asserts is the  
16 fair market value of the Flamingo Property, in the current uncertain real estate market, (2)  
the Debtor is causing a substantial depletion of equity in the Flamingo Property, which  
will soon make it impossible for the Trustee to administer if the Debtor further delays and  
does not pay all allowed claims in full based on the terms of the Second Amended  
Stipulation<sup>4</sup>; and (3) the Trustee is very concerned that the Debtor will continue to deplete  
equity out of assets of the Estate like the Flamingo Property so that by the time there is a  
final non-appellable order allowing the administrative claims, the Trustee would be left  
with no assets to liquidate to satisfy the administrative claims.**

17 Based on the above and under the terms as set forth in more detail below, the Trustee  
18 believes the only option available is the orderly sale of the Flamingo Property and based on good  
19 business reasons, including the current real estate market and the economics of this Estate, it is in  
the best interest of the creditors of this Estate that this Sale Motion be approved so that Trustee  
does not lose these favorable business opportunity.

20 **A. Bankruptcy Filing and Trustees**

21 Kaveh Lahijani ("Kaveh" or "Debtor") commenced this case by filing a voluntary  
Chapter 7 Bankruptcy Petition on April 22, 1998 ("Petition Date").

22 The predecessor trustee Steven E. Smith filed a no asset report, and the Debtor received a  
23 discharge.

24 The case was closed pursuant to Order of this Court entered August 3, 1999.

25 On motion by the Debtor and pursuant to Order of the Bankruptcy Court entered June 6,  
26 2002, the Debtor's bankruptcy case was reopened to abandon a cross-complaint held by the  
estate against the Simantob creditors and Peter C. Anderson was appointed as the Chapter 7  
trustee ("Trustee Anderson"). On July 24, 2006, Trustee Anderson resigned.

27 <sup>3</sup> "Liens and Encumbrances" means any and all liens, claims, and encumbrances of any nature whatsoever.

28 <sup>4</sup> Capitalized terms are defined below.

1 On July 25, 2006, the Office of the United States Trustee appointed John P. Pringle  
2 ("Trustee Pringle") to serve as the Chapter 7 trustee in this bankruptcy case.

3 Following a disputed election, John M. Wolfe was confirmed as the permanent Chapter 7  
4 trustee pursuant to Order entered on October 18, 2007. Mr. Wolfe is the fourth trustee in the  
5 case.

6 **B. Consolidation with Elan Enterprises, Inc. and Vista Lane LLC**

7 Pursuant to an order entered on October 3, 2005 ("Substantive Consolidation Order"),  
8 this Court substantively consolidated the Debtor's assets with that of Elan Enterprises, Inc. and  
9 Vista Lane LLC. The Debtor appealed the Substantive Consolidation Order to the District Court.  
10 The District Court affirmed pursuant to a December 7, 2007 Order Affirming Orders of the  
11 Honorable Geraldine Mund of the United States Bankruptcy Court Granting Motion for  
12 Substantive Consolidation and Denying Motion for Reconsideration and/or Amendment. The  
13 Debtor then appealed to the Ninth Circuit Court of Appeals. The appeal was pending when the  
14 Debtor and the Trustee executed the Second Amended Stipulation (defined below). The Second  
15 Amended Stipulation required the Debtor to dismiss the Ninth Circuit appeal, which he did.

16 Prior to the Substantive Consolidation Order, Vista Lane LLC owned all rights, title and  
17 interests in and to certain real property located at 630 Vista Lane, Laguna Beach, CA ("Vista  
18 Lane Property"), which was acquired from Bryan Mashian in 2000.

19 Prior to the Substantive Consolidation Order, Elan Enterprises, Inc. owned all rights, title  
20 and interests in and to certain real property located at 1000 Flamingo Road, Laguna Beach, CA  
21 ("Flamingo Property"), which was purchased on June 10, 1999 from "John J. Terry and Carol A.  
22 Terry, Trustees for the Terry Family Trust dated 9/13/85 who acquired title under trust dated  
23 9/13/94." The Flamingo Property consists of a partially constructed residence.

24 **As a result of the Substantive Consolidation Order, both the Vista Lane Property  
25 and the Flamingo Property are assets of this Estate.**

26 **C. Second Amended Stipulation, Tolling Agreement and the Debtor's Performance**

27 The Trustee and the Debtor reached an agreement entitled Second Amended Stipulation  
28 Among Successor Trustee, John M. Wolfe, Vista Lane LLC, Elan Enterprises, Inc. and Debtor,  
Kaveh Lahijani Regarding Administration of the Estate and Commitment to Pay Allowed Claims  
in Full ("Second Amended Stipulation") which was approved by Judge Mund pursuant to an  
order entered on April 3, 2008.

29 The Trustee also entered into a certain Third Tolling Stipulation Between the Chapter 7  
30 Trustee and Bryan B. Mashian, Micha Mottale and Larissa Lahijani re Tolling and Standstill  
Agreement ("Tolling Agreement") to toll the expiring of the statute of limitations concerning the  
Estate's alleged avoidance claims against the Debtor's family and friends ("Insider Claims").  
The Tolling Agreement was approved by the Court pursuant to an order entered on April 2,  
2009.

31 Although the Debtor has paid substantial sums in administrative fees and costs allowed  
32 by final order to date pursuant to the terms of the Second Amended Stipulation, he has defaulted  
33 under said stipulation by failing to stay current on the mortgage payments with respect to the  
34 Vista Lane Property, as well as the Flamingo Property. With respect to the Vista Lane Property,  
35 the Trustee is informed and believes that the Debtor has not made a mortgage payment to  
36 Washington Mutual (now JP Morgan Chase) (which holds the first priority deed of trust on the  
37 Vista Lane Property) since March 2009. The Trustee is further informed and believes that  
38 Debtor has not made payments to Bankers West Mortgage (which holds a second priority deed  
of trust against the Vista Lane Property) since December 2008. With respect to the Flamingo

Property, the Trustee is informed and believes that the Debtor has not made payments to Bankers West Mortgage (which holds a first priority deed of trust on the Flamingo Property) since September 2008 allegedly when construction funds were exhausted. Bankers West Mortgage filed a motion for relief from the automatic stay as to the Flamingo Property. JP Morgan Chase filed a motion for relief from stay as to the Vista Lane Property. Both motions for relief from stay were opposed by the Trustee and denied by the Court. However, due to the Debtor's failure to make payments to the secured lenders, the Trustee is concerned that the equity in the Vista Lane Property as well as the Flamingo Property may be diminished significantly and rapidly. As such, following the Debtor's defaults under the Second Amended Stipulation, the Trustee immediately commenced active marketing of the Vista Lane Property and the Flamingo Property for sale. The Debtor has been interfering and preventing such sales and the Trustee fears that by the time that all remaining claims are reduced to final judgment, there will be no assets for which to satisfy such claims.

**D. The Proposed Sale of the Flamingo Property**

The Flamingo Property is the real property that is the subject of this Sale Motion. The legal description of the Flamingo Property is set forth in the Preliminary Title Report dated March 12, 2009, a true and correct copy of which is attached as **Exhibit 1** to the Declaration of John M. Wolfe ("Wolfe Declaration") annexed to the Sale Motion. The legal description for the Flamingo Property is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the proposed sale transaction.

As set forth in the Preliminary Title Report, title to the Flamingo Property is held in the name of "Elan Enterprises, Inc., a California corporation" ("Elan Enterprises, Inc."). As set forth above, pursuant the final order entered on October 3, 2005, this Court substantively consolidated the Debtor's assets with that of Elan Enterprises, Inc. and Vista Lane LLC. As such, the Flamingo Property is an asset of the Estate.

**No proceeds from the sale of the Flamingo Property will be disbursed to the Debtor.**

Attached as **Exhibit 2** to the Wolfe Declaration annexed to the Sale Motion is a true and correct copy of the Vacant Land Purchase Agreement and Joint Escrow Instructions ("Purchase Agreement"). In brief, subject to approval of the Court, the principal terms of the sale of the Flamingo Property are as follows<sup>5</sup>:

Buyer:	Khaghany Pakideh
Purchase Price:	\$3,460,000 (\$180,000 deposit and balance due at closing, all cash)
Closing	Within two weeks of escrow being opened. <b>Based on prior orders of the Court, escrow may not open until on or after July 1, 2009.</b>
Contingency Period:	Buyer shall have until July 8, 2009 conduct all inspections.
Outstanding Real Property Taxes:	To be paid by Seller through escrow

<sup>5</sup> This summary of the material terms is not meant to be a complete review of every provision of the Asset Purchase Agreement. In the event of any inconsistency between the terms of the Asset Purchase Agreement and this summary, the terms of Asset Purchase Agreement shall control and not this summary.

Allocation of Certain Costs:	Escrow Fees – Buyer and Seller to each pay their own costs If so desired, Buyer to pay for a natural hazard zone disclosure report. If so desired, Buyer to pay for wood destroying pest inspection report and recommended work for repairs. If so desired, Buyer to pay for inspection report from the City of Laguna Beach. If so desired, Buyer to pay for all costs for compliance  If so desired, Buyer to pay for a home warranty plan.
Real Estate Commission:	Through this Sale Motion, the Debtor seeks authorization to pay a listing real estate broker commission to Sellers agent, Joseph Galosic of Capstone Realty. The Buyer's real estate agent will not be receiving a commission. If necessary, the Trustee's real estate agent has agreed to reduce his 3% commission to allow for payment of closing costs.

In addition, the Trustee proposes to sell the Flamingo Property on an “as is – where as” basis with all faults and conditions then existing at property, and the Buyer shall agree that (1) the Trustee is not making any representations, warranties, either express or implied, as to the condition, use (prior, present and future), or otherwise of the Flamingo; and (2) the Trustee shall not provide the Buyer with any reports as to the conditions or uses for the Flamingo Property.

**E. Treatment of the Liens and Encumbrances Under the Sale**

The following chart sets forth the liens and encumbrances against the Flamingo Property along with the Trustee's proposed treatment of the liens and encumbrances through the proposed sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owning</u>	<u>Treatment Through the Sale</u>
Orange County Treasurer and Collector	Real property taxes	\$219	All outstanding real property taxes will be paid through escrow on the sale transaction.
Bankers West Mortgage	Deed of Trust recorded November 5, 2003, Instrument No. Unknown	\$3,360,000	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of the Bankers West Mortgage, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the disputed lien of Bankers West Mortgage

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owed</u>	<u>Treatment Through the Sale</u>
EJO Construction, Inc. dba E.O. Construction	Mechanic's Lien recorded September 30, 2008, Instrument No. 2008000456383	\$54,726.62	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens
Hassinger HVAC	Mechanic's Lien recorded October 7, 2008, Instrument No. 2008000467137	\$20,000	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens
Kilday Plumbing Co.	Mechanic's Lien recorded November 17, 2008, Instrument No. 2008000536147	\$25,000	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens



<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owed</u>	<u>Treatment Through the Sale</u>
Eurobath & Tile, Inc.	Mechanic's Lien recorded December 8, 2008, Instrument No. 2008000563099	\$7,422.98	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens
Ganahl Lumber Company	Mechanic's Lien recorded December 19, 2008, Instrument No. 2008000582594	\$9,402.51	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens
Ian S. Kennedy, Inc.	Mechanic's Lien dated June 15, 2009, unknown recording information	\$13,695	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona fide dispute, the Trustee seeks to sell the Flamingo Property free and clear of the lien in favor of this Mechanic's Lien, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.  See further discussion below regarding the Disputed Alleged Mechanic's Liens

**F. The Lien of Bankers West Mortgage is the Subject of a Bona fide Dispute**

It should be noted that the amount (and possibly validity) of Bankers West Mortgage's lien for approximately \$3,360,000 against the Flamingo Property is suspect for various reasons.

Bankers West also filed a Motion for Relief from the Automatic Stay ("Bankers West Stay Motion") against the Flamingo Property. The Trustee opposed the Bankers West Stay

1 Motion, and challenged lien of Banker West Mortgage against the Flamingo Property. The  
2 Court set an evidentiary hearing to allow the parties to conduct discovery. Ultimately, the Court  
denied the Bankers West Stay Motion.

3 Further, the Trustee believes that the loan advances by Bankers West Mortgage to Elan  
4 Enterprises, Inc. (the borrower at the time) did not total anywhere near the \$3,000,000 on the  
face of the deed of trust. It is believed that the amount Bankers West Mortgage can prove it  
5 advanced to Elan Enterprises, Inc. on account of the Flamingo Property is much less than the  
face of the \$3,000,000 trust deed and is actually somewhere close to \$550,000.

6 In summary the lien of Bankers West Mortgage is the subject of a bona fide dispute.

7 **G. Disputed Alleged Mechanic's Liens**

8 As set forth in the chart above, the disputed alleged mechanic's liens of EJO  
9 Construction, Inc., dba E.O. Construction, Hassinger HVAC, Kilday Plumbing Co., Eurobath &  
Tile, Inc., Ganahl Lumber Company and Ian S. Kennedy, Inc. (collectively the "Disputed  
10 Alleged Mechanic's Liens") were each recorded after the Flamingo Property became an asset of  
the Estate. Each of the Disputed Alleged Mechanic's Liens were recorded after the entry of the  
11 Substantive Consolidation Order (entered on October 3, 2005) and after the Substantive  
Consolidation Order was recorded with the Orange County Recorder's Office (recorded on  
12 November 29, 2005). As such, the Trustee believes that the Disputed Alleged Mechanic's Liens  
were recorded in violation of the automatic stay under Bankruptcy Code Section 362, and  
13 therefore, under applicable federal bankruptcy law, the Disputed Alleged Mechanic's Liens are  
each invalid as any action taken in violation of the automatic stay is void as a matter of law. See,  
14 In re Schwartz, 951 Fed.2d, 596 (9th Cir. 1992).

15 Furthermore, the Trustee believes that there are causes of action under Bankruptcy Code  
Section 549 to have each of the Disputed Alleged Mechanic's Liens set aside in that they were  
16 recorded after the Petition Date and after the Substantive Consolidation Order, and none of the  
Disputed Alleged Mechanic's Liens were authorized by the Bankruptcy Code nor order of the  
17 Bankruptcy Court.

18 In addition, the Trustee disputes the validity of the Disputed Alleged Mechanic's Liens  
on the grounds that they may not have been properly perfected under the strict statutory  
19 requirements under California state law applicable to mechanic's liens, including but not limited  
to California Civil Code sections 3115-3117<sup>6</sup> and 3144<sup>7</sup>.

20  
21 <sup>6</sup> California Civil Code § 3115 provides: each original contractor, in order to enforce a lien, must record his  
22 claim of lien after he completes his contract and before the expiration of (a) 90 days after the completion of the work  
of improvement as defined in Section 3106 if no notice of completion or notice of cessation has been recorded, or  
(b) 60 days after recordation of a notice of completion or notice of cessation.

23 California Civil Code § 3116 provides: Each claimant other than an original contractor, in order to enforce  
24 a lien, must record his claim of lien after he has ceased furnishing labor, services, equipment, or materials, and  
before the expiration of (a) 90 days after completion of the work of improvement if no notice of completion or  
25 cessation has been recorded, or (b) 30 days after recordation of a notice of completion or notice of cessation.

26 California Civil Code § 3117 provides: Where the work of improvements is not made pursuant to one  
original contract for the work of improvement but is made in whole or in part pursuant to two or more original  
27 contracts, each covering a particular portion of the work of improvement, the owner may, within 10 days after  
completion of any such contract for a particular portion of the work of improvement, record a notice of completion.  
If such notice of completion be recorded, notwithstanding the provisions of Sections 3115 and 3116, the original  
28 contractor under the contract covered by such notice must, within 60 days after recording of such notice, and any  
claimant under such contract other than the original contractor must, within 30 days after the recording of such

1 In summary, each of the Disputed Alleged Mechanic's Liens are the subject of a bona  
2 fide dispute.

3 **H. Estimated Net Proceeds**

4 The Trustee estimates that the net proceeds to be generated from the sale will be  
5 approximately \$3,364,631, as follows:

Purchase Price	\$3,460,000
Less: Outstanding Real Property Tax	(\$219)
Less: Cost of Sale (2.75%) (Includes real estate agent commission. The Buyer's real estate agent will not be receiving a commission. If necessary, the Trustee's real estate agent has agreed to reduce his 3% commission to allow for payment of closing costs.)	(\$95,150)
Estimated Net Sale Proceeds (To which the disputed alleged lien of Bankers West Mortgage in the amount of \$3,360,000 and the Disputed Alleged Mechanic's Liens totaling approximately \$130,247.11, will attach in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order)	\$3,364,631

14 **I. The Debtor's Intentional Depletion of Equity in the Flamingo Property and Other**  
15 **Games**

16 The Debtor has not made the monthly mortgage payments Bankers West Mortgage (the  
17 first trust deed lienholder on Flamingo Property) since September 2008, thereby causing  
substantial equity decrease in the Flamingo Property.

18 The Trustee is concerned that the Debtor will engage in his old machinations and will  
19 again claim that he has no money to pay any of the allowed administrative claims or worse,  
20 appeal the orders allowing the administrative claims so that there will be significant delays.  
Meanwhile, he will continue to deplete equity out of assets of the Estate like the Flamingo  
Property so that by the time there is a final non-appellable order allowing the administrative  
claims, the Trustee would be left with no assets to liquidate to satisfy the administrative claims.

21 This is most evident by the recent event involving the Flamingo Property. Immediately  
22 after the hearing on May 14, 2009 wherein the Court vacated the turnover order that was to be  
23 effective on May 18, 2009 or alternatively on June 30, 2009 if the Debtor was current on his  
24 mortgages, the Debtor caused the cancellation of the insurance on the Flamingo Property with  
25 Caspian Insurance Services. The Trustee understands that Caspian Insurance Services is the  
same company that the Debtor had been using for years. This cancellation of insurance has  
significant impact on the Estate in that the Estate would have to get a new policy with other  
insurance companies, which are significantly higher and required non-refundable premiums. As

26 notice of completion, record his claim of lien. If such notice is not recorded, then the period for recording claims of  
27 lien shall be as provided for in Sections 3115 and 3116.

28 California Civil Code § 3144 provides: that an action to foreclose must be commenced within 90 days after  
the recording of the claim of lien unless credit has been extended by the lien claimant or the time period has been  
waived.

1 of the drafting of this Sale Motion, that premium for insurance on the Flamingo Property is  
2 \$14,828.69. The Trustee was required to pay this amount by June 14, 2009 when the insurance  
policy with Caspian Insurance Services will expired.

3 While marketing the Flamingo Property for sale, which has been under construction,  
4 there was a third party interested buyer who was trying to start the due diligence process.  
5 However, the Trustee learned that the Debtor advised the architect (Kirk Saunders) who drew the  
plans to not to speak to any third party concerning the project because the Flamingo Property "is  
his" and that "he is going to get it back through the bankruptcy".

6 **J. Notice to All Interested Parties of the Bidding Procedures**

7 The Trustee has determined that it would benefit the Estate by permitting all interested  
8 parties to receive information and bid the for the Flamingo Property instead of selling the  
9 property to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best  
10 offer for the benefit of the creditors of this Estate, the Trustee is utilizing the following bidding  
procedures ("Bidding Procedures") and requests that Court order approving the sale transaction  
for the Flamingo Property also provides for approval of the following Bidding Procedures:

11 a. Competing offers to acquire the Flamingo Property shall be submitted in writing  
12 to the Trustee and his counsel Shulman Hodges & Bastian LLP on or before 4:00 p.m. (Pacific  
Time) the day prior to the hearing on the Sale Motion.

13 b. Competing offers shall provide for an all-cash purchase price to be paid to the  
Trustee that exceeds the Purchase Price herein by at least Ten Thousand Dollars (\$10,000).

14 c. Competing offers shall be accompanied by a purchase agreement in form and  
15 substance substantially identical to the Purchase Agreement agreed to by the Buyer, together  
with a redlined, marked copy showing all changes to the Purchase Agreement (the "Competing  
Agreement").

16 d. Competing offers must not be subject to due diligence contingencies or other  
17 conditions; any bidder shall have an opportunity to view the Flamingo Property prior to the  
hearing on the Sale Motion (notwithstanding the foregoing, all due diligence must be completed  
18 by all qualified bidders prior to the hearing on the Sale Motion).

19 e. All competing bids must remain open until the conclusion of the hearing on the  
20 Sale Motion.

21 f. All competing bids shall contain terms and conditions no less favorable to Trustee  
than the terms and conditions of the Purchase Agreement.

22 g. **ALL COMPETING BIDS MUST ACKNOWLEDGE THAT THAT THE**  
23 **FLAMINGO PROPERTY IS BEING SOLD ON AN "AS-IS AND WHERE-IS" BASIS**  
24 **WITH ALL FAULTS AND CONDITIONS THEN EXISTING AT THE VISTA LANE**  
25 **PROPERTY, AND THE COMPETING BIDDER SHALL AGREE THAT (1) THE**  
26 **TRUSTEE IS NOT MAKING ANY REPRESENTATIONS, WARRANTIES, EITHER**  
27 **EXPRESS OR IMPLIED, AS TO THE CONDITION, USE (PRIOR, PRESENT AND**  
28 **FUTURE), OR OTHERWISE OF THE FLAMINGO PROPERTY; AND (2) THE**  
**TRUSTEE SHALL NOT PROVIDE THE WINNING BIDDER WITH ANY REPORTS**  
**AS TO THE CONDITIONS OR USES FOR THE VISTA LANE PROPERTY.**  
**WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING,**  
**THE COMPETING BIDDER SHALL SPECIFICALLY ACKNOWLEDGE AND AGREE**  
**TO WAIVE, RELEASE AND FOREVER DISCHARGE ANY CLAIM IT HAS, MIGHT**  
**HAVE IN THE FUTURE, HAD OR MAY HAVE AGAINST THE TRUSTEE, THE**

1 ESTATE, THE TRUSTEE (IN HIS OFFICIAL AND PERSONAL CAPACITY)  
2 (COLLECTIVELY FOR THIS PURPOSES "SELLER") AND/OR SELLER'S AGENTS  
3 WITH RESPECT TO THE CONDITION OF THE FLAMINGO PROPERTY, EITHER  
4 PATENT OR LATENT. THE WINNING BIDDER SHALL EREBY RELEASE, AND  
5 FOREVER DISCHARGE THE SELLER, ITS EMPLOYEES, REPRESENTATIVES,  
6 AGENTS, SUB-AGENTS, SUCCESSORS, ASSIGNS AND ATTORNEYS FROM ANY  
AND ALL CLAIMS FOR DAMAGES AND OTHER CAUSES OF ACTION AT LAW OR  
EQUITY FOR INJURY, DESTRUCTION, LOSS OR DAMAGE OF ANY KIND OR  
CHARACTER, TO THE PERSON OR PROPERTY OF WINNING BIDDER AND THE  
WINNING BIDDER'S EMPLOYEES, AGENTS AND REPRESENTATIVES ARISING  
OUT OF OR IN ANY WAY RELATING TO THE FLAMINGO PROPERTY.

7 h. All competing bids must be accompanied by admissible evidence in the form of  
8 affidavits or declarations establishing the bidder's good faith, within the meaning of Section  
363(m) of the Bankruptcy Code.

9 i. All competing bids must be accompanied by admissible evidence in the form of  
10 affidavits or declarations establishing that the bidder is capable and qualified, financially, legally,  
and otherwise, of unconditionally performing all obligations under the Competing Agreement.

11 j. All competing bids must be accompanied by a cashier's check made payable to  
12 the order of Trustee in an amount of Two Hundred Thousand Dollars (\$200,000) (the  
"Overbidder's Deposit"), and further provide that (A) if the Bankruptcy Court approves a sale of  
13 the Flaming Property to that bidder, the Trustee may retain the Overbidder's Deposit for  
14 application as a non-refundable deposit to be applied against the Purchase Price at the closing of  
the transaction, and (B) if the Bankruptcy Court does not approve a sale of the Flamingo  
Property to that bidder, the Trustee will promptly return the Overbidder's Deposit to Overbidder.

15 k. All competing bids must contain a proposed closing date that is not later than the  
16 Closing Date set forth in the Purchase Agreement.

17 l. If any bidders have submitted a qualifying competing bid in accordance with  
18 these Bidding Procedures (each such bid, a "Qualified Bid"), then a public auction of the  
Flamingo Property (the "Auction") shall be held at the hearing on the Sale Motion. The Auction  
shall be governed by the following procedures:

19 i. All bidders shall be deemed to have consented to the core  
20 jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in  
connection with any disputes relating to the Auction or the sale of the Vista Lane  
Property.

21 ii. Bidding will commence at the amount of the highest  
22 Qualified Bid.

23 iii. Each subsequent bid shall be in increments of no less than  
24 \$5,000, provided, however, Buyer shall have the right to match any competing  
Qualified Bid and Buyer's bid shall be the winning bid if it matches the highest  
Qualified Bid at the Auction.

25 iv. Any entity that fails to submit a timely, conforming  
26 Qualified Bid, as set forth above, shall be disqualified from bidding for the  
27 Flamingo Property at the Auction or the hearing on the Sale Motion.

28 v. If no timely, conforming Qualified Bid is submitted, the  
Trustee request at the hearing on the Sale Motion that the Court approve the

proposed sale of the Vista Lane Property to Buyer.

**m. Clarification Regarding Debtor's Requirements Under the Bidding Procedures in the Event Debtor Elects to Cure Defaults and Perform Under the Second Amended Stipulation.** In the event that the Debtor elects to proceed with the funding under the Second Amended Stipulation prior to the close of escrow on the Flamingo Property to the Buyer or a Winning Bidder, which would result in the Trustee not consummating the sale of the Flamingo Property and the canceling of escrow with the Buyer or the Winning Bidder, as the case may be, the Debtor will be required to (1) cure all defaults under the Second Amended Stipulation and (2) pay to the Trustee all allowed administrative expenses of the Estate. Furthermore, the cure of defaults under the Second Amended Stipulation includes, but is not limited to, the payment of all unpaid mortgage payments with respect to the Vista Lane Property and the Flamingo Property. All cure payments under the Second Amended Stipulation, including all unpaid administrative expenses, all unpaid mortgage payments with respect to the Vista Lane Property and the Flamingo Property, and any break-up fee related to the Vista Lane Property (collectively the "Default Cure Amount"), shall be in the form of "Good Funds" and deposited with the Trustee's counsel by no later than July 15, 2009. "Good Funds" means cash or other immediately available, good funds.

**K. Approval of the Sale Serves the Best Interests of the Estate and Creditors**

The Trustee believes that the proposed sale, subject to overbidding is the best available alternative for maximizing the value of the Flamingo Property for the Estate and creditors. The alternative to the proposed orderly sale would be the potential loss of Flamingo Property through foreclosure sale by the secured creditor, which would not benefit any party with allowed claims.

As set forth in the Declaration of Joseph Galosic, the offer presented represents a fair market value for the Flamingo Property in today's real estate market. Furthermore, since listing the Flamingo Property for sale, there have been numerous calls and much interest in the property. In that time, the Trustee has received three offers from three different buyers ranging from \$2,400,000, to the present offer of \$3,460,000.

The proposed sale price is \$460,000, over the amount claimed by the first trust lienholder, Bankers West Mortgage, to be the value of the Flamingo Property.<sup>8</sup> Moreover, the Debtor is causing a substantial depletion of equity (from September 2008) in the Flamingo Property, which will soon make it impossible for the Trustee to administer if the Debtor further delays and does not pay all allowed claims in full based on the terms of the Second Amended Stipulation. Given the history of this case and the Debtor's legal maneuvering, the Trustee is very concerned that if he waits any longer that the Debtor will continue to deplete assets of the Estate like the Flamingo Property so that by the time there is a final non-appellable order allowing the administrative claims, the Trustee would be left with no assets to liquidate to satisfy the administrative claims.

Accordingly, and based on the above, the Trustee believes that sale serves the best interest of all creditors, including administrative creditors who will be allowed some or all of their claims on or about June 25, 2009.

For further information please see the CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) APPROVING THE SALE OF REAL PROPERTY ASSET OF THE ESTATE FREE AND CLEAR OF LIENS; (2) COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES

<sup>8</sup> In connection with its Motion for Relief From Stay on the Flamingo Property, Bankers West Mortgage submitted an appraisal valuing the Flamingo Property at \$3,000,000.

1 UTILIZED, (3) APPROVING ASSET PURCHASE AGREEMENT IN CONNECTION WITH  
2 THE SALE; (4) APPROVING PAYMENT OF REAL ESTATE COMMISSION AND OTHER  
3 COSTS OF SALE; AND (5) GRANTING OTHER RELATED RELIEF; MEMORANDUM OF  
4 POINTS AND AUTHORITIES; DECLARATIONS OF JOHN M. WOLFE AND JOSEPH  
5 GALOSIC IN SUPPORT THEREOF on file with the Clerk of the above-entitled Court which  
6 may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Sale  
7 Motion may be obtained by written request to the Trustee's attorney at the address indicated  
8 above.

9 **PLEASE TAKE FURTHER NOTICE** that any opposition or other responsive paper to  
10 the Sale Motion must be filed with the Clerk of the above-entitled Court and a copy served on  
11 Shulman Hodges & Bastian LLP to the attention of Lynda T. Bui at the address indicated above  
12 and the San Fernando Valley, 21051 Warner Center Lane Suite 115, Woodland Hills, California  
13 91367 at least fourteen days prior to the hearing in the form required by **Local Bankruptcy Rule**  
14 **9013-1(f)**.

15 **PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be  
16 deemed as consent to the relief requested in the Sale Motion. **SEE, LOCAL BANKRUPTCY**  
17 **RULE 9013-1(h)**.

18 Dated: June 23, 2009

**SHULMAN HODGES & BASTIAN LLP**

/s/ Leonard M. Shulman

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Leonard M. Shulman  
Lynda T. Bui  
Attorneys for John M. Wolfe, the Chapter 7 Trustee  
for the bankruptcy estate of Kaveh Lahijani